Supreme Court, U.S.
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No. 92-641

In The

Supreme Court of the United States

October Term, 1992

LEONARD NOBELMAN AND HARRIET NOBELMAN,

Petitioners,

vs.

AMERICAN SAVINGS BANK,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF ON THE MERITS FOR PETITIONERS, LEONARD NOBELMAN AND HARRIET NOBELMAN

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QUESTION PRESENTED FOR REVIEW

May debtors in a Chapter 13 bankruptcy case use 11 U.S.C. Section 506(a) to reduce the secured claim upon their residence to fair market value and treat the balance as an unsecured claim without violation of 11 U.S.C. Section 1322(b)(2)?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Leonard Nobelman and wife, Harriet Nobelman -

Debtors and Appellants

American Savings Bank -

Creditor and Appellee

Molly W. Bartholow (then Tim N. Truman) -

Standing Chapter 13 Trustee

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In re Nobelman, 129 B. R. 98 (N.D. Tex. 1991) (Pet. Cert. App. 16-31)

In re Nobelman, Case No. 390-35116-HCA-13 (Bankr. N.D. Tex. 1991) (Pet. Cert. App. 32-35)

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED AND TIME FACTORS

Petition for Certiorari was filed on October 13, 1992, from the Judgment of the Court of Appeals, which was entered on August 13, 1992, giving jurisdiction under 28 U.S.C. Section 1254.

STATUTES WHICH THE CASE INVOLVES

Title 11, U.S.C. Section 103(a)

"Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title."

Title 11, U.S.C. Section 506(a)

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may

be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

Title 11, U.S.C. Section 1322(b)(2)

"(a) The plan shall –

(1) provide for the submission of all or such portion of future earnings of other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class.

(b) Subject to subsections (a) and (c) of this section, the plan may –

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with

the debtor differently than other unsecured claims,

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and

(10) include any other appropriate provision not inconsistent with this title.

(c) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years."

STATEMENT OF THE FACTS OF THE CASE

The Nobelmans' residence is a condominium with a fair market value of $23,500, although secured by a lien in the total amount of $71,335.04. In their Chapter 13 Plan of Debt Adjustment, the Nobelmans proposed to value down the secured claim to the fair market value and treat the balance as an unsecured claim under a technique commonly called "lien splitting." (From Bankruptcy Judge's Findings of Fact and Conclusions of Law, Pet. Cert. App. 32-34.)

SUMMARY OF ARGUMENT

When the mortgage exceeds the value, all debtors have the right in all chapters of bankruptcy to abandon their homestead. The lienholder, having foreclosed, may file an unsecured claim for its deficiency, which, as unsecured, will be subject to discharge.

All 11 U.S.C. Section 1322(b)(2) does is to replicate the effect of that foreclosure in Chapter 13 proceedings, giving the creditor a secured claim to the fair market value which it would have received at foreclosure, with an unsecured claim for its anticipated deficiency. This result is dictated both by the plain language of Section 1322(b)(2) and construction of the Bankruptcy Code (adopting the common name, although technically the Bankruptcy Reform Act of 1978) as a whole. Chapters 1, 3, and 5 apply generally to Chapters 7, 11, 12, and 13. The meaning of Section 1322(b)(2) is very clear if one has first read Section 506(a) to ascertain the definition of secured claim.

The legislative history of the homestead lien restriction in Section 1322(b)(2) shows that it is a compromise between the House of Representatives and the Senate, but gives no further guidance to the issue before this Court. Four Circuits in six decisions support the position of the Petitioners, while the opinion being reviewed disagrees.

ARGUMENT

(a) Question Presented and Practical Aspects

If all good things must come to an end, as is often said, then it was only to be expected that the go-go years would end in the real estate collapse of the mid-eighties. With the glut of real estate now in lender and federal hands, it is difficult to predict either the nadir or the duration. There are a great many unfortunates who now are saddled with high mortgage amounts and high interest rates that had their genesis in another economic time,

but which are both onerous and unrealistic today. As these unfortunates come to the point of financial disaster sufficient to compel the filing of a Title 11 proceeding, their first wish is usually to save their homestead if they can, since they are ill-equipped to acquire another. Certainly they can always rent, and rental rates reflect the true economic times, but how far did Congress intend to go in providing them an alternative to salvage their home? That is the question posed by this case.

Certainly, these Debtors have the right to abandon the homestead, an issue upon which there is no dispute. Assuming a situation of no equity, as here, it would then be anticipated that the lienholder would obtain permission from the Court to foreclose, by seeking a lift of the stay. At the foreclosure sale, the assumption continues that the lienholder will receive something approximating the fair market value, with the balance of its claim becoming an unsecured deficiency claim. That deficiency claim will be eligible to share *parri passu* with the other unsecured claims, but also will be discharged of any future liability against the Debtors.

If that option is always available to the Debtors, why not replicate the effect of a foreclosure in the bankruptcy itself? What would be inequitable in allowing as an alternative another option by which essentially the same result could be reached just by determining the fair market value at a valuation hearing, then having the secured claim reduced to that determined amount, and allowing the balance of the claim to be classified as unsecured? The Appellants Nobelman would assert that is exactly what 11 U.S.C. Section 506(a) was intended to do.

If that is so, however, how can it be reconciled with the apparent special protection which 11 U.S.C. Section 1322(b)(2) grants to the holders of a homestead lien? Would it not be so, just as Appellees have complained, that a homestead lien would then be treated as just another secured claim?

The response is, not really. Certainly, 11 U.S.C. Section 1322(b)(2) does bestow special protection for a homestead lien, but it does not follow that the lien is completely untouchable. The question is better stated, just how much special protection did Congress intend to provide? It is undisputed that no special protection exists in the Bankruptcy Code for any lien other than an exclusive homestead lien. Thus, for liens secured by vehicles, furniture, other real estate, or even the homestead, if in combination with anything else, the debtors can reduce the lien to fair market value, as well as change the interest rate, stretch out payments, and alter the terms. This cannot be done as to an exclusive homestead lien. The original contract terms must be met as to interest rates, payment amounts, and contract terms (as the Nobelmans have done in this case). These restrictions, the Appellants assert, are the special protections, and the only special protections afforded by Congress to the homestead lienholder.

If, however, the impoverished debtors are to have their feet held to the fire anyway, at least as to the same monthly payment amounts, what is the real benefit to them of a reduced amount in principal? There are two benefits, in fact. The first is the light at the end of the tunnel. That can be easily illustrated by the facts of this case alone. If the Nobelmans were forced to pay

$71,335.04 (which, with interest, would be over $100,000) to keep a homestead worth $23,500, they will necessarily be paying much more than the value of the asset serving as collateral. That is money which cannot go to unsecured creditors or family expenses. The dollars available to the Nobelmans are finite in number and can only be spent once.

The second benefit is that it makes refinancing of the homestead mortgage a viable option for the first time. The benefit to the new lienholder is that it allows to it a competitive return on current market rates with collateral actually worth the amount of the debt. The benefit to the debtor is that if refinanced, they now can have the benefit of interest and payment amounts reduced to realistic amounts.

The benefits are even greater for the old lienholder, because it will receive cash equal to the fair market value of its collateral. Too often in the real world when the old lienholder is required to foreclose, it will exercise its right to credit bid and become the new owner. Indeed, it frequently will be the only bidder to appear at the foreclosure sale. The result, of course, is more real estate to go into its inventory. The bank graveyard is now littered with institutions who became top heavy with real estate in inventory, and then watched continued write-downs by examiners until the point of insolvency was reached. Bank examiners also live in the real world and are unfettered by 11 U.S.C. Section 1322(b)(2).

Wouldn't the result often be, however, a windfall to debtors as the real estate market recovers? The truthful answer is maybe, depending on just when and if the real

estate market recovers and how great that recovery may be. On any given day, the market forces are such that fair market value could rise or sink even further. Those prospects are taken into consideration in any appraisal. The Bankruptcy Code requires that a fair market value be determined at some precise time in a number of areas, ranging from adequate protection to confirmation in Chapter 11 Reorganizations. That determination is made in an evidentiary hearing with all parties-in-interest entitled to present all of the factors relevant to value, including the prospect of a future rise in price. Federal Rule of Bankruptcy Procedure 3012. Application of this rule works well for commercial real estate and there is no reason why it cannot work equally well for residential property.

(b) Language of Statute

One must assume that these and other practical aspects were all considered by Congress in the enactment of Sections 1322(b)(2) and 506(a). As this Court has said, the inquiry here is to ascertain and apply Congressional intent. *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962); *U.S. v. American Trucking Assoc.*, 310 U.S. 534 (1940). It is not to sit as a legislative committee to hear policy complaints.

It is the plain language which controls, *Patterson v. Shumate*, ___ U.S. ___, 112 S. Ct. 2242, 119 L. Ed. 2d 519 (1992); *United States v. Nordic Village, Inc.*, ___ U.S. ___, 112 S. Ct. 1011, 117 L. Ed. 2d 181 (1992); *Union Bank v. Wolas*, ___ U.S. ___, 112 S. Ct. 527, 116 L. Ed. 2d 514 (1991); *Board of Governors. v. McCorp. Financial, Inc.*, ___ U.S. ___, 112 S.

Ct. 459, 116 L. Ed. 2d 358 (1991). The presumption is that Congress says what it means and means what it says. *Connecticut Nat. Bank v. Germain*, ___ U.S. ___, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992).

In the format of the Bankruptcy Code, Chapters 1, 3, and 5 are of general application throughout the Code, while Sections 7, 11, 12, and 13 set out the specific relief chapters. 11 U.S.C. Section 103.

The Bankruptcy Code should be construed as a whole. *Dole v. United States*, 494 U.S. 76 (1990); *In re Timbers of Inwood Forest*, 793 F.2d 1380 (5th Cir. 1986), vacated 802 F.2d 777 (5th Cir. 1986), reinstated on rehearing en banc, 866 F.2d 363 (5th Cir. 1987), aff'd, *United Savings Association v. Timbers of Inwood Forest Association*, 481 U.S. 1068 (1987); 2 A *Sutherland, Statutory Construction* (4th ed.), Section 46.05. It is almost always unsafe to divide a statute when considering it. *Richards v. United States*, 369 U.S. 1 (1962); *see also, United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) (the lack of a detailed legislative history is not disastrous when the meaning is plain and the statutory scheme is both coherent and consistent).

The answer to the question before the Court permits a simple conclusion if, but only if, one first reads 11 U.S.C. Section 506(a) and accepts that secured claim means collateral value. The total claim may be partially unsecured if the collateral value is less than the claim. In common parlance, one may speak of a $50,000 secured claim on a $1,000 automobile, but in the bankruptcy context, it becomes necessary to re-orient the thinking to a $1,000 secured claim and a $49,000 unsecured claim.

Thus, when one reads 11 U.S.C. Section 1322(b)(2) with the 11 U.S.C. Section 506(a) definition of secured claim in mind, the terms "secured claims," "claims secured," and "security interest" are all read as if the additional words "to the extent of collateral value" appeared immediately after each such phrase. That mental insertion is what 11 U.S.C. Section 506(a) commands, and when the command is followed, the confusion and ambiguity found by some courts, including the panel below, disappear.

While many other authorities have reached contrary results, they all have indulged in backward reasoning. That is to say, instead of first examining the Code sections of general application before going to the specific chapter, they begin at 11 U.S.C. Section 1322(b)(2) and make their initial determination of just what the homestead lien restriction is. Only then do they turn back to 11 U.S.C. Section 506(a). When 11 U.S.C. Section 506(a) does not seem to support the initial conclusion reached, they decide that there is a conflict between the two statutes which must be resolved. One technique which was used by the panel below is to decide that while 11 U.S.C. Section 506(a) may reduce "secured claim" to collateral value, the "rights" of holders of secured claims remain as before, a $50,000 lien on a $1,000 vehicle. Thus, the Section 1322(b)(2) exclusion is to the "rights" of a homestead lien, and these "rights" are unaffected by 11 U.S.C. Section 506(a). *See In re Etching*, 128 B.R. 662 (Bankr. W.D. Wisc. 1991), applying what it terms the "rule of last antecedent." The flaw in the reasoning of these grammatical gymnastics is that when Congress reduces the secured claim to collateral value, it has also reduced the

rights of the holder of such a secured claim. Thus, when 11 U.S.C. Section 506(a) reduces secured claims, inescapably it has reduced the rights of the holders of secured claims as well.

The recent case of *Lomas Mortgage USA v. Wiese*, ___ F.2d ___ (1992 WL 354915) (9th Cir. 1992), examined and rejected the *Etching* type argument, holding that the "other than" clause clearly modified "secured claim."

By far the more common approach is simply to read 11 U.S.C. Section 506(a) out of the Code, at least where 11 U.S.C. Section 1322(b)(2) is concerned. This is done by declaring that 11 U.S.C. Section 1322(b)(2) is a specific statute, while 11 U.S.C. Section 506(a) is general in nature. Since they are perceived to conflict, 11 U.S.C. Section 1322(b)(2) is held to modify the general. That technique was also employed by the panel below.

This approach has unquestioned validity when applied in such a fashion as to read a limited repeal into an older statute of wide scope when considering its effect upon a newer and more specific enactment with which it appears to conflict. It is a bit more unusual to see it applied as to two sections of the same enactment. The more common approach is to see if the entire enactment cannot be read harmoniously without leading to absurd results. Of course, Chapters 1, 3, and 5 are general. They are intended to be, since they are of general application in Chapters 7, 11, 12, and 13. If the general/specific dichotomy is to be approved by this Court, then any time a Chapter 1, 3, or 5 section is found at odds with a perceived result, it can be disregarded, a result surely at odds with the intent of Congress.

(c) Legislative History

Those opposed to 11 U.S.C. Section 506(a) contend there is clear support to their position in the legislative history. The Nobelmans, frankly, find only some support for special protection to the holders of homestead mortgages, but no help whatsoever to answer the question of how far that protection was intended to go. Still, recent opinions of this Court indicate that while the first examination should be of the language itself, there may still be a look at the history. *Toibb v. Radloff*, ___ U.S. ___, 111 S. Ct. 2197, 115 L. Ed. 2d 145 (1991); *Johnson v. Home State Bank*, ___ U.S. ___, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991); *Farrey v. Sunderfoot*, ___ U.S. ___, 111 S. Ct. 1825, 114 L. Ed. 2d 337 (1991).

Intellectually, we must acknowledge at the outset that a search for the intent of Congress is something of a fiction, in that the chance of hundreds of men having exactly the same intent is infinitesimally small. *Rodin, Statutory Interpretation*, 43 *Harv. L. Rev.* 863, 869 (1930). Nevertheless, there are certain time-honored rules of construction and extrinsic aids to guide the search.

Reports of standing committees are generally regarded as a reliable source for learning the meaning of the bill in issue. 2A *Sutherland, Statutory Construction* (4th ed.), Section 48.06. Statements of the committeeman in charge of the bill are accorded the same degree of reliability. 2A *Sutherland, Statutory Construction*, (4th ed.), Section 48.14.

The Bankruptcy Code, which emerged on October 6, 1978, had been in process for over five years. It was a conglomeration of ideas and compromises from

numerous sources, many of whom were not Congressmen. The best and most exhaustive collection of materials on the legislative history is found in three volumes of *Collier on Bankruptcy*, (15th ed.), Appendix Volumes 1-3. Included there is an article by Kenneth Klee, which amounts to a roadmap of the activities leading up to the enactment, *Legislative History of the New Bankruptcy Law*, originally appearing in 28 *DePaul L. Rev.*, 941 (1979). With specific reference to 11 U.S.C. Sections 506(a) and 1322(b)(2), see also 3 *Collier on Bankruptcy*, (15th ed.), Section 506.03; *Howard, Stripping Down Liens: Section 506(d) and the Theory of Bankruptcy*, 65 *Am. Bankr. L. J.*, 373 (1991).

The Commission on the bankruptcy laws of the United States (which included four Congressmen out of nine members) submitted both its report and the first draft of the new bankruptcy law in 1973. *Report of the Commission on the Bankruptcy Laws of the United States*, H.R. Dec. No. 93-137, 93rd Cong., 1st Sess., Part II, 204 (1973). The Commission Report spoke in favor of reducing homestead liens to value, but the Code draft attached as Exhibit II contained no language carrying that out. This inconsistency lends credence to the report that the Code draft itself was written by the National Bankruptcy Conference, a private group. In 1974, a competing draft was prepared by the National Conference of Bankruptcy Judges.

Both the Commission bill and the Judges' bill, as they came to be commonly called, were introduced by the 93rd Congress and then re-introduced to the 94th Congress.

These drafts were circulated to bench, bar, and academicians for comment. At the particular urging of Representative Don Edwards, the National Bankruptcy Conference and the National Association of Bankruptcy Judges conferred and were able to resolve many, but not all, of the differences in the two drafts. These compromises permitted the introduction on July 11, 1977, by the House Judiciary Committee, of a single bill, H.R. 8200, in the place of the former Commission and Judges' bills. To this point, there is no exclusion as to homestead liens similar to 11 U.S.C. Section 1322(b)(2) found in H.R. 8200, or in the earlier Commission or Judges' bills.

For most of this period, there was little activity in the Senate. Nothing comparable to H.R. 8200 had been introduced. It is true that some two years earlier, specifically from February to November of 1975, the Senate Subcommittee on Improvements in Judicial Machinery held hearings, during which nearly 80 witnesses testified over 24 days, while another several hundred interested parties presented their views in writing. *Senate Debates*, 124 Cong. Rec. S14718-45 (*Daily Ed.*, September 7, 1978).

One of the 80 witnesses who appeared was a Mr. Edward J. Kulik, a Senior Vice President of Massachusetts Mutual Life Insurance Company. He was opposed to any reduction in homestead liens and much preferred that all homeowners be forced to pay in full. It is to this position statement that most look for to support a view that the legislative history shows an intent to favor homestead liens by excluding the application of 11 U.S.C. Section 506(a). *See, Grubbs v. Houston First American Savings Ass'n.*, 730 F.2d 236 (5th Cir. 1984, en banc).

Statements by interested witnesses are not even admissible to determine legislative intent. 2A *Sutherland, Statutory Construction*, Section 48.16. Regrettably, the Senate Subcommittee never made a report as to its conclusions, so we have no clue as to how it may have evaluated the hundreds of position statements that it considered.

That was essentially the total activity of the Senate until Senator DeConcini was appointed as Chairman of that Subcommittee almost two years later. He then introduced S. 2266 as the Senate version of H.R. 8200 on October 31, 1977. The relevant part of S. 2266 then read that a Chapter 13 debtor may "modify the rights of holders of secured claims (other than claims secured by mortgages on real property)." Then, as now, there was no language to indicate that the 11 U.S.C. Section 506(a) definition of secured claim was or was not meant to be first applied.

S. 2266 was accompanied by the report of the Senate Committee of the Judiciary, which includes the Subcommittee for Improvements in Judicial Machinery. The report, however, only repeats the statutory language, again giving no further insight.

On September 7, 1978, the Senate considered H.R. 8200, but substituted its S. 2266, and then requested a conference with the House. While formal conferees were named by each chamber, it was concluded that time was too short for formal conferences. If agreement could not be reached on a single bill by October 14, 1978, the 95th Congress would adjourn and the process would have to begin anew in the 96th Congress. Consequently, it was

decided it would be necessary to forego any formal meetings and to seek resolution by informal, and unreported, meetings.

The burning issues of the day did not deal with homestead liens. That concern was overshadowed by disagreements about the method of appointment and the status of Bankruptcy Judges, or the creation and funding of a United States Trustee system. All of these differences and more were resolved by a series of unreported compromises. *See, Matter of Pierce*, 935 F.2d 709, 713 (5th Cir. 1991).

We know that there was also a compromise on the 11 U.S.C. Section 1322(b)(2) issue, but only because the language of H.R. 8200 and S. 2266 was re-written as it appears now. There is nothing, however, to tell us that the compromise extended to excluding 11 U.S.C. Section 506(a).

(d) Review of Decisions

When the Ninth Circuit was first presented with the exact question as here, it found the question not that difficult of resolution. It reasoned that 11 U.S.C. Section 103(a) made 11 U.S.C. Section 506(a) applicable to 11 U.S.C. Section 1322(b)(2). Consequently, only the secured portion of a homestead mortgage debt was protected. Moreover, this analysis presented no conflict, so that normal principles of statutory construction were sufficient to answer the question. *In re Houghland*, 886 F.2d 1186 (9th Cir. 1989).

The Third Circuit agreed, concluding that Section 506(a) limited the secured claim to fair market value, so that was the only portion of the claim which could not be modified under Section 1322(b)(2). The rest of the claim was unsecured, and thus, was eligible for modification under the Plan along with other unsecured claims. *Sapos v. Prov. Inst. of Savings*, 967 F.2d 918 (3rd Cir. 1992); *Wilson v. Commonwealth Mortgage Bank*, 895 F.2d 123 (3rd Cir. 1990).

The Tenth Circuit also concurred, reasoning that Section 506(a) creates two claims, one secured and one unsecured. 11 U.S.C. Section 1322(b)(2) provides special protection only to the secured claim. *In re Hart*, 923 F.2d 1410 (10th Cir. 1991).

The Second Circuit also joined with the majority in *Bellamy v. Federal Home Loan Mortgage Co.*, 962 F.2d 176 (2nd Cir. 1992). At the same time, it concluded that this result was not affected by *Dewsnup v. Timm*, ___ U.S. ___, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992), since that decision involved non-residence farmland previously abandoned from the estate by the Chapter 7 Trustee. *Dewsnup* further construed Section 506(d) instead of Section 506(a) and also stated that it would be limited to its facts. The Third Circuit has subsequently agreed. *Lomas Mortgage USA v. Wiese*, ___ F.2d ___ (1992 WL 354917) (9th Cir. 1992).

CONCLUSION

Petitioners pray that the opinion of the Court of Appeals for the Fifth Circuit be reversed and rendered, with this matter to be remanded to the Bankruptcy Judge for the Northern District of Texas to reconsider confirmation of the Nobelmans' Plan of Debt Adjustment consistent with this Court's opinion.

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